

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Sergio Vargas Lopez )  
(A219-623-252), )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MERRICK B. GARLAND, )  
 Attorney General of the United States, )  
 950 Pennsylvania Avenue, NW )  
 Washington, D.C. 20530 )  
 )  
 ALEJANDRO MAYORKAS, Secretary, )  
 Department of Homeland Security, )  
 425 I Street )  
 Washington, D.C. 20536 )  
 )  
 U.S. CITIZENSHIP AND )  
 IMMIGRATION SERVICES, )  
 5900 Capital Gateway Dr #2040 )  
 Camp Springs, MD 20746 )  
 )  
 UR M. JADDOU, Director, )  
 U.S. Citizenship and Immigration )  
 Services, )  
 5900 Capital Gateway Dr #2040 )  
 Camp Springs, MD 20746 )  
 )  
 NEBRASKA SERVICE CENTER, U.S. )  
 Citizenship and Immigration Services, )  
 850 S. St., Lincoln, NE 68508 )  
 )  
 Defendants. )  
 )

**COMPLAINT FOR WRIT OF MANDAMUS**

**To the Honorable Judges of Said Court:**

Plaintiff, Mr. Sergio Vargas Lopez (“Plaintiff”), through undersigned counsel, alleges as follows:

**INTRODUCTION**

1. This is a civil action brought pursuant to 28 U.S.C. § 1361, 8 U.S.C. § 1329, and 28 U.S.C. § 1331, to redress the deprivation of rights, privileges and immunities secured to Plaintiffs to compel Defendants to perform a duty Defendants owe to Plaintiffs. Jurisdiction is also conferred by 5 U.S.C. § 704.
2. This action is brought to compel Defendants and those acting under them to take action on the Form I-601A submitted by Plaintiff. The Application was filed with the Department of Homeland Security (“DHS”) and the United States Citizenship and Immigration Services’ (“USCIS”), on September 30, 2020. (Exhibit A, Copy of I-601A Receipt Notice).
3. Defendants, DHS and USCIS, are charged by law with the statutory obligation to adjudicate the Application.

## **JURISDICTION AND VENUE**

4. This action arises under the Immigration and Nationality Act of 1952 (“INA”), 8 U.S.C. § 1255, and 8 U.S.C. § 1254. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), the INA, the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and the Mandamus Act, 28 U.S.C. § 1361.
5. Venue is proper in this Court under 28 U.S.C. §1391(e)(3) because the Defendants are officers of the United States acting in their official capacities, and the U.S. Attorney General’s Office, the Department of Homeland Security (“DHS”), and the United States Citizenship and Immigration Services (“USCIS”) are agencies of the United States.

## **FACTS**

1. Plaintiff has an approved petition filed by his U.S. Citizen spouse. (Exhibit B, Copy of Approval Notice of I-130, Petition for Alien Relative).
2. On September 30, 2020, Plaintiff filed an Application for Provisional Unlawful Presence Waiver. (Exhibit A, Copy of Receipt Notice).
3. On October 23, 2020, USCIS issued receipt notice assigned to Nebraska Service Center with receipt number LIN2190020650. (*See Exhibit A*).

4. Processing times for this type of application have continued to increase since Plaintiff submitted his application in 2020. At the time of filing the median processing time was 11.2 months, that has increased to 35.0 months as of January 31, 2023. (Exhibit C, USCIS Historical National Median Processing Time by Fiscal Year).
5. USCIS continues to increase their reported processing times, preventing Plaintiff from submitting inquiries while his application is within the changing processing time.

## **CLAIMS**

6. Defendants have willfully and unreasonably delayed in and have refused to adjudicate Plaintiff's Application.
7. Defendants owe Plaintiff a duty to adjudicate the Application and have failed to perform their duty.
8. Plaintiffs have exhausted any administrative remedies that may exist.

## **WHEREFORE, Plaintiffs prays that the Court:**

9. Compel Defendants and those acting under them to perform their duty to adjudicate Plaintiff's Application;

10. Grant such other and further relief as this Court deems proper under the circumstances; and

11. Grant Attorney's fees and costs of Court to Plaintiff under the Equal Access to Justice Act.

RESPECTFULLY SUBMITTED this 10th day of March, 2023.

KUCK BAXTER IMMIGRATION LLC,

/s/ Jorge Gavilanes  
Jorge Gavilanes  
GA Bar Number: 432273  
365 Northridge Road, Suite 300  
Atlanta, GA 30350  
Phone: 404-816-8611  
Fax: 404-816-8615

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing **COMPLAINT FOR WRIT OF MANDAMUS** was served by certified mail, on:

MERRICK B. GARLAND,  
Attorney General of the United States,  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

ALEJANDRO MAYORKAS, Secretary,  
Department of Homeland Security,  
425 I Street  
Washington, D.C. 20536

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Services,  
5900 Capital Gateway Dr #2040  
Camp Springs, MD 20746

NEBRASKA SERVICE CENTER, U.S.  
Citizenship and Immigration Services,  
850 S. St., Lincoln, NE 68508

RYAN K. BUCHANAN, U.S. Attorney  
Federal District Court, Northern District of Georgia  
The United States Attorney's Office, Richard B. Russell Federal Building  
75 Ted Turner Drive, S.W., Suite 600  
Atlanta, Georgia 30303-3309

KUCK BAXTER IMMIGRATION LLC,

/s/ Jorge Gavilanes

Jorge Gavilanes

GA Bar Number: 432273

365 Northridge Road, Suite 300

Atlanta, GA 30350

Phone: 404-816-8611

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NORTHERN DISTRICT OF GEORGIA  
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	)	<b>WRIT OF MANDAMUS</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Civil Action No.</b>
<b>MERRICK B. GARLAND,</b>	)	
<b>Attorney General of the United States,</b>	)	
<b>950 Pennsylvania Avenue, NW</b>	)	
<b>Washington, D.C. 20530</b>	)	
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**Defendants.** )  
\_\_\_\_\_) )

## **LIST OF EXHIBITS**

## **Exhibit A I-601A Approval Notice**

## **Exhibit B I-130 Receipt Notice**

**Exhibit C** USCIS Historical National Median Processing Time by Fiscal Year